

§ 24.5

12 CFR Ch. I (1–1–06 Edition)

(b) *Limited liability.* A national bank may not make an investment under this part that would expose the bank to unlimited liability.

[61 FR 49660, Sept. 23, 1996, as amended at 64 FR 70991, Dec. 20, 1999; 68 FR 48776, Aug. 15, 2003]

§ 24.5 Public welfare investment after-the-fact notice and prior approval procedures.

(a) *After-the-fact notice of public welfare investments.* (1) Subject to § 24.4(a), an eligible bank may make an investment authorized by 12 U.S.C. 24 (Eleventh) and this part without prior notification to, or approval by, the OCC if the bank follows the after-the-fact notice procedures described in this section.

(2) An eligible bank shall provide an after-the-fact notification of an investment, within 10 working days after it makes the investment, to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(3) The bank's after-the-fact-notice must include:

(i) A description of the bank's investment;

(ii) The amount of the investment;

(iii) The percentage of the bank's capital and surplus represented by the investment that is the subject of the notice and by the bank's aggregate outstanding public welfare investments and commitments, including the investment that is the subject of the notice; and

(iv) A statement certifying that the investment complies with the requirements of §§ 24.3 and 24.4.

(4) A bank may satisfy the notice requirements of paragraph (3) of this section by completing form CD-1, attached as Appendix 1 to this part.

(5) A national bank that is not an eligible bank but that is at least adequately capitalized, and has a composite rating of at least 3 with improving trends under the Uniform Financial Institutions Rating System, may submit a letter to the Community Development Division requesting authority to submit after-the-fact notices of its investments. The Community Development Division considers these requests on a case-by-case basis.

(6) Notwithstanding the provisions of this section, a bank may not submit an after-the-fact notice of an investment if:

(i) The investment involves properties carried on the bank's books as "other real estate owned"; or

(ii) The OCC determines, in published guidance, that the investment is inappropriate for after-the-fact notice.

(b) *Investments requiring prior approval.* (1) If a national bank does not meet the requirements for after-the-fact investment notification set forth in this part, the bank must submit an investment proposal to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219. The bank may use form CD-1, attached to this part as Appendix 1, to satisfy this requirement.

(2) The bank's investment proposal must include:

(i) A description of the bank's investment;

(ii) The amount of the investment;

(iii) The percentage of the bank's capital and surplus represented by the proposed investment and by the bank's aggregate outstanding public welfare investments and commitments, including the proposed investment; and

(iv) A statement certifying that the investment complies with the requirements of §§ 24.3 and 24.4.

(3) In reviewing a proposal, the OCC considers the following factors and other available information:

(i) Whether the investment satisfies the requirements of § 24.3 and § 24.4;

(ii) Whether the investment is consistent with the safe and sound operation of the bank; and

(iii) Whether the investment is consistent with the requirements of this part and the OCC's policies.

(4) Unless otherwise notified in writing by the OCC, and subject to § 24.4(a), the proposed investment is deemed approved after 30 calendar days from the date on which the OCC receives the bank's investment proposal.

(5) The OCC, by notifying the bank, may extend its period for reviewing the investment proposal. If so notified, the bank may make the investment only with the OCC's written approval.

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(6) The OCC may impose one or more conditions in connection with its approval of an investment under this part. All approvals are subject to the condition that a national bank must conduct the approved activity in a manner consistent with any published guidance issued by the OCC regarding the activity.

[61 FR 49660, Sept. 23, 1996, as amended at 64 FR 70991, Dec. 20, 1999; 68 FR 48776, Aug. 15, 2003]

§ 24.6 Examples of qualifying public welfare investments.

Investments that primarily support the following types of activities are examples of investments that meet the requirements of § 24.3:

(a) Affordable housing activities, including:

(1) Investments in an entity that finances, acquires, develops, rehabilitates, manages, sells, or rents housing primarily for low- and moderate-income individuals;

(2) Investments in a project that develops or operates transitional housing for the homeless;

(3) Investments in a project that develops or operates special needs housing for disabled or elderly low- and moderate-income individuals; and

(4) Investments in a project that qualifies for the Federal low-income housing tax credit;

(b) Economic development and job creation investments, including:

(1) Investments that finance small businesses (including equity or debt financing and investments in an entity that provides loan guarantees) that are located in low- and moderate-income areas or other targeted redevelopment areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments that finance small businesses or small farms that, although not located in low- and moderate-income areas or targeted redevelopment areas, create a significant number of permanent jobs for low- or moderate-income individuals;

(3) Investments in an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a

low- and moderate-income area or targeted redevelopment area and occupied primarily by small businesses, or that is occupied primarily by small businesses that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals; and

(4) Investments in low- and moderate-income areas or targeted redevelopment areas that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(c) Investments in CEDEs, including:

(1) Investments in a national bank that has been approved by the OCC as a national bank with a community development focus;

(2) Investments in a community development financial institution, as defined in 12 U.S.C. 4742(5);

(3) Investments in a CEDE that is eligible to receive New Markets tax credits under 26 U.S.C. 45D; and

(d) Other public welfare investments, including:

(1) Investments that provide credit counseling, job training, community development research, and similar technical assistance services for non-profit community development organizations, low- and moderate-income individuals or areas or targeted redevelopment areas, or small businesses located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments of a type approved by the Federal Reserve Board under 12 CFR 208.22 for state member banks that are consistent with the requirements of § 24.3; and

(3) Investments of a type previously determined by the OCC to be permissible under this part.

[68 FR 48776, Aug. 15, 2003]

§ 24.7 Examination, records, and remedial action.

(a) *Examination.* National bank investments under this part are subject to the examination provisions of 12 U.S.C. 481.